



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,848	11/05/2003	Bindu Rama Rao	14319US02	7791

23446 7590 08/09/2005

MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO, IL 60661

EXAMINER

YIGDALL, MICHAEL J

ART UNIT	PAPER NUMBER
2192	

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/701,848

Applicant(s)

RAO ET AL.

Examiner

Michael J. Yigdall

Art Unit

2192

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 July 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered ~~and an explanation of how the new or amended claims would be rejected is provided below or appended.~~
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-22.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant contends that the Lajoie reference fails to teach, suggest or disclose "loader software that supports a plurality of loaders" (Applicant's remarks, page 6). Specifically, Applicant does not agree that the firmware integrity checker (FIC) 350 of Lajoie corresponds to the "loader software" of claim 1, and that even if Applicant did agree, the Office action has failed to specifically identify in Lajoie the "plurality of loaders" (Applicant's remarks, page 7).

However, Lajoie discloses that the firmware integrity checker 350 transfers control to the application program 310 or to the upgrade program 320 (see, for example, paragraph 0039, lines 5-9). To transfer control to a program is to initiate or resume execution of the program. Lajoie further discloses that the application program 310 and the upgrade program 320 are stored in non-volatile memory (NVM) 210 (see, for example, FIG. 2). Inherently, the program code stored in the non-volatile memory 210 is first loaded into RAM 280 or into some other temporary memory for subsequent execution by the microcontroller 270 (see, for example, FIG. 2). That is to say, when the firmware integrity checker 350 transfers control to a program, it initiates loading the program from storage for execution. The firmware integrity checker 350 of Lajoie is thus "loader software" that supports a loader. Furthermore, the firmware integrity checker 350 supports loading and executing both the application program 310 and the upgrade program 320, and is thus "loader software that supports a plurality of loaders" as recited in claim 1.

Applicant contends that the Lajoie reference fails to teach, suggest or disclose "storing a location in the file system of the saved information for updating firmware to a memory reference" (Applicant's remarks, page 7). Specifically, Applicant contends that the firmware header, in Lajoie, does not hold data associated with the downloaded and saved information for updating firmware.

However, this argument was addressed in the previous Office action. Lajoie discloses that "the upgrade of the application program 310 is simply achieved by copying the new application program 310 from the server 110 to the application program memory area 220" (see, for example, paragraph 0034, lines 1-4). In other words, the new application program 310 is downloaded and saved to the application program memory area 220. The new application program 310 is for upgrading the firmware (see, for example, paragraph 0011, lines 4-8), and thus the new application program 310 is "saved information for updating firmware" as recited in claim 16. It has a location in the file system within the application program memory area 220 (see, for example, FIG. 2). Lajoie further discloses that "the firmware header 300 is updated, preferably right before the upgrade of the application program 310 begins," and that "the new firmware header 300 is useful because it indicates the last page, thus the length of the application program" (see, for example, paragraph 0034, lines 4-8). In other words, the new firmware header 300 is updated to indicate the last page of the new application program 310. That is to say, the new firmware header 300 is updated to indicate a location in the file system of the new application program 310. The new firmware header 300 is stored in the firmware header memory area 215 (see, for example, FIG. 2). Therefore, Lajoie teaches "storing a location in the file system of the saved information for updating firmware to a memory reference," as recited in claim 16. Moreover, notwithstanding Applicant's statement to the contrary, the firmware header 300 clearly holds "data associated with the downloaded and saved information for updating firmware" in the sense that it holds data on the state of the upgrade program 320 (see, for example, paragraph 0029 and TABLE 1).

MY



ANTONY NGUYEN-BA
PRIMARY EXAMINER